PUBLIC UTILITIES

BOARD OF PUBLIC UTILITIES

Nuclear Plant Decommissioning Cost and Trust Fund Review

Readoption with Amendments:	N.J.A.C. 14:5A
Proposed:	December 16, 2002 at 34 N.J.R. 4338(a).
Adopted:	May 7, 2003 by the Board of Public Utilities, Jeanne M. Fox, President, and Frederick F. Butler, Carol J. Murphy, Connie O. Hughes and Jack Alter, Commissioners.
Filed:	May 8, 2003 as R. 2003 d. , without change.
Authority:	N.J.S.A. 48:2-13 and 48:2-21.
BPU Docket Number:	EX 02050293
Effective Dates:	May 8, 2003, Readoption June 2, 2003, Amendments
Expiration Date:	May 8, 2008

The Board of Public Utilities (Board) is readopting its Nuclear Plant Decommissioning Cost and Trust Fund Review rules, N.J.A.C. 14:5A, with minor amendments. The rules provide procedures to ensure that there will be adequate funds for the proper decommissioning of nuclear power plants owned by New Jersey utilities at the cessation of operation of the facilities. The proposed readoption with amendments was published on December 16, 2002 at 34 N.J.R. 4338(a). The Board accepted comments on the proposal through February 14, 2003. Two persons submitted comments.

Summary of Public Comments and Agency Responses:

The following persons submitted timely comments on the proposal:

1. Sarah H. Steindel; Division of the Ratepayer Advocate (DRA)
2. Michael J. Connolly; Thelen, Reid & Priest, LLP; on behalf of Jersey Central Power and Light (JCP&L)

Comments:

1. COMMENT: We support the proposed readoption. The current regulations relating to the funding of nuclear decommissioning are necessary to allow the Board to safeguard the interests of New Jersey's electric ratepayers. (DRA)
   RESPONSE: The Board acknowledges this comment in support of the rules.

2. COMMENT: The rule should apply to any nuclear generating unit for which a New Jersey electric public utility is collecting a charge in rates for the purpose of funding decommissioning, regardless of whether the New Jersey public utility owns the nuclear facility. New Jersey ratepayers continue to fund decommissioning costs for some nuclear units that have been divested by New Jersey utilities. For these nuclear units, the Board should continue to receive all decommissioning studies and reports that would be required of utilities still owning nuclear plants, including the standard decommissioning update upon cessation of commercial operation, even though they no longer own the facility. Specific language should be added to N.J.A.C. 14:5A-1.1 to this effect. (DRA)
   RESPONSE: The Board agrees that utilities must remain accountable for monies collected from ratepayers to fund decommissioning, regardless of whether the utility retains ownership of the nuclear facility. However, the Board cannot make this change upon adoption. Therefore, the Board plans to propose an amendment to the rules in order to accomplish this. This expansion will not apply to amounts currently paid by ratepayers to decommissioning at Three Mile Island Unit 1 (TMI-1) and the Oyster Creek nuclear facility, because these amounts do not provide for future decommissioning costs, but instead are repayments (sometimes called "top off" payments) of amounts previously contributed by JCP&L to the TMI-1 and Oyster Creek decommissioning trusts, in accordance with agreements executed with the purchaser of these units when they were divested. The obligation to comply with the rules would cease for any utility once New Jersey ratepayers are no longer contributing to decommissioning costs. It should be noted that, in PSE&G's case, the issue of when ratepayers cease paying for nuclear decommissioning costs is currently being litigated.

3. COMMENT: The Board's proposal includes a minor clarifying amendment in recognition of the fact that many nuclear units formerly owned by New Jersey electric utilities have been divested to non-utility entities over the past few years. Thus, in the provision allowing extra time for filing information on generating units jointly owned by a New Jersey utility and an out-of-state entity, the Board has proposed to use the term "joint owner," instead of the term "utility," to refer to such out-of-state entities. We support this proposed amendment. (DRA)
   RESPONSE: The Board acknowledges this comment in support of the rules.

4. COMMENT: The rules should address nuclear plants which may not begin active decommissioning at the time they cease commercial operation. The current rules, at N.J.A.C. 15:5A-2.1, require an updated filing with the Board about five years prior to the cessation of commercial operation. This is a useful provision, but it does not adequately address the circumstances of the TMI-2 generating unit. TMI-2 is not

operating, but the owners have not determined specific plans or schedules for decommissioning this unit. The Board should consider requiring an updated filing approximately five years before the scheduled commencement of active decommissioning of a nuclear generating unit. (DRA)

RESPONSE: TMI-2 is at present in a condition known as SAFSTOR (see N.J.A.C. 14:5A-1.2 for a definition of SAFSTOR). The final physical dismantling of TMI-2 is scheduled to occur no earlier than 2014. The suggestion to require an updated decommissioning filing about five years before final TMI-2 decommissioning is anticipated would result in such a filing occurring in 2009. Since the Board will have to readopt these rules once again in 2008 to prevent their expiration, there will be an opportunity to revisit this suggestion prior to the time the suggested report would be required. Moreover, should the Board determine that an updated filing is necessary for TMI-2 prior to 2008, the Board can issue an order requiring such an updated filing at any time prior to decommissioning. Accordingly, the Board has not made the rule change suggested by the commenter.

5. COMMENT: The Nuclear Decommissioning Costs Review Regulations are no longer needed because they apply to only one regulated entity. The rules became effective at a time when New Jersey's utilities had interests in several large nuclear facilities, but that is no longer the case. As acknowledged in the proposal, these rules would apply solely to the mothballed Three Mile Island Unit 2 ("TMI-2") and the Saxton Nuclear Experimental facility ("Saxton"). Only one New Jersey utility (Jersey Central Power & Light) has interests in these two facilities. In light of the deregulation of electricity generation, it is unlikely that other New Jersey utilities will acquire interests in nuclear facilities in the future. Thus, the Board's interests in decommissioning have become very limited, well defined and of very narrow scope, and a formal rule is not necessary for the Board to carry out its oversight responsibilities. Therefore, rather than readopting this rule, Board Staff should work with JCP&L to develop flexible and abbreviated reporting criteria and schedules. Should more New Jersey utilities obtain interests in nuclear facilities in the future, the need for rules can be addressed at that time. (JCP&L)

   RESPONSE: There is no assurance that a utility will not acquire an ownership interest in a nuclear facility in the future, especially considering the constantly changing landscape of the national, global, and state energy industries. Furthermore, the Board anticipates proposing amendments to the rules (see response to comment 2 above), which will expand the number of facilities covered by the rules to include all facilities for which New Jersey ratepayers are contributing to decommissioning costs. While it might be possible to meet the Board's oversight goals with a different process, the existing process functions adequately. Further, developing a new set of reporting requirements would require the investment of time and effort (on the part of both the Board and regulated entities), which is not justified by the incremental degree of improvement over the current scheme that is likely to result. Therefore, the Board is adopting the rules as proposed.

6. COMMENT: The rule should not be readopted because its purpose and scope do not match existing conditions, and it is burdensome. The two nuclear facilities covered

by this rule are unique. TMI-2 has not been in commercial operation since 1979, and is currently maintained in monitored storage under an NRC license scheduled to expire in 2014. The other unit governed by the rules, Saxton, expects to complete its decommissioning work in the third quarter of 2003. These types of facilities were not contemplated by and do not require the extensive administrative oversight reflected in the Nuclear Decommissioning Costs Review Regulations. The rule requires extensive reporting on technical aspects of decommissioning. This information is not useful when dealing with a small experimental nuclear facility, nor with a plant that operated commercially for one month and has been undergoing accident cleanup and monitored storage for almost 25 years. The rules also require unnecessary and burdensome reporting regarding decommissioning trust funds. Finally, the regulations provide for public notice and comment on decommissioning reports, Board review, the possibility of discovery, and public and evidentiary hearings (N.J.A.C. 14: 5A-3.1-3.6). While the Board has a legitimate interest in reviewing the costs of and funding for the future decommissioning of jurisdictional nuclear facilities, these rules are considerably more extensive and burdensome than is necessary to meet this objective. Instead, Board staff should work with JCP&L to develop less formal reporting standards for TMI-2. For example, the Board could limit the readoption of the Nuclear Decommissioning Costs Review Regulations to the annual report now required by Section 4.2, or a modified version thereof. Of course, JCP&L would also continue to provide reports regarding Saxton until the completion of its decommissioning. (JCP&L)

RESPONSE: While the rules may not have been specifically adopted with the two currently regulated nuclear facilities in mind, the rules provide important benefits and enable the Board to ensure that funds are being managed effectively and that funding for decommissioning will be available when needed. As stated above, revising the Board's procedures at this point would likely result in more effort and burden than is justified for any possible incremental improvement that might result. Therefore, the Board is adopting the rules without change.

7. COMMENT: The regulations exceed the standards in comparable Federal law. (JCP&L)

RESPONSE: The Board is aware that the rules in some respects exceed Federal requirements. As stated in the proposal's Federal Standards Statement, the Board believes that the additional stringency of the State rules is justified by the Board's statutory mandate to oversee utility rates, a mandate not shared by the NRC.

Federal Standards Analysis

Executive Order No. 27(1994) and P.L. 1995, c.65 (N.J.S.A. 52:14B-22 through 24) require State agencies, which adopt State rules that exceed any Federal requirements, to include in the rulemaking document a comparison with Federal law. The readopted N.J.A.C. 14:5A contains some standards and requirements that exceed those of comparable Federal law. The comparable Federal law is found in the rules of the Nuclear Regulatory Commission (NRC) at 10 C.F.R. § 50.75. In general, the State rules require somewhat more frequent and detailed reporting by nuclear facility

operators, and require a site-specific, as opposed to formulaic, determination of decommissioning costs.

The major difference between the State and Federal rules lies in the different approaches for determining the required amount of each decommissioning fund. The NRC rules at 10 C.F.R. § 50.75(c)(1) set forth a minimum dollar amount based on the size of the nuclear facility as measured by its thermal output in megawatts-thermal (MWt), to which is added a factor for escalation of the costs of labor, energy and waste burial. By contrast, the State rules require a site-specific decommissioning cost estimate that takes into account not only the particulars of the nuclear facility as built, but also the state of the art in decommissioning technology, and up-to-date cost estimates for disposal and all other related costs. The State rules require that the decommissioning cost estimate be accompanied by a complete description of the decommissioning plan and of the basis for the cost estimates. The Federal rule requires only the dollar amount of the cost estimate, with minimal background information on how that amount was calculated.

The cost to nuclear facility operators of performing the State-required decommissioning cost estimate will be substantially higher than the cost of demonstrating compliance under the Federal rules. This stems from the information gathering, planning and analysis, and calculations required. However, this site-specific approach is necessary to ensure that a decommissioning fund will be adequate for the specific complexities of the actual site and facility; it ensures that the fund reflects the changes over time in decommissioning technology and other variables; and it minimizes the chance of encountering unforeseen expenses at the time of decommissioning. This approach results in a more accurate decommissioning cost estimate. An accurate cost estimate is crucial to prevent overcharging of ratepayers for a decommissioning fund that is larger than necessary, or undercharging that can result in insufficient funding (and thus in a possible rate spike) when operations cease and decommissioning begins. Thus, the Board requires more accurate data to carry out its mandate to ensure that decommissioning funds, and consequently the utility rates that support them, will be adequate but not excessive.

An additional aspect of the State rules that is somewhat more stringent than the Federal rules is the degree of oversight regarding the management of the decommissioning trust fund. The State requires a nuclear facility operator to submit an annual report of decommissioning trust fund balances. See N.J.A.C. 14:5A-4.2. The NRC rules require only bi-annual reporting of both the trust fund balance and updated decommissioning cost estimates. The State rules also require at N.J.A.C. 14:5A-4.2(a)1vii that a nuclear facility operator submit an accounting of all fund management and trustee fees, commissions and taxes incurred in maintaining the decommissioning trust fund. Compliance with the State rules regarding trust fund management will result in very minor additional costs for nuclear facility operators, because the information they must gather and submit is already in their possession. Again, the Board's need for up-to-date, accurate information in order to carry out its mandate to protect ratepayers justifies these minor costs.

The State rules at N.J.A.C. 14:5A-4.2(a)1xi include a requirement not found in the Federal rules, that a New Jersey nuclear facility owner must report the decommissioning trust fund balances of out-of-state joint nuclear facility owners. Under the Federal rules, these balances would be separately reported by each owner. The State rule requirement for a combined figure allows the Board to obtain a comprehensive picture of the entire decommissioning fund, so as to ensure that New Jersey ratepayers do not subsidize decommissioning costs that should be carried by out of state joint owners. Determining this combined figure is likely to require a small amount of extra time spent in calculations, so that the cost of complying with the State rule in this respect may be very slightly higher than the cost of complying with the Federal rule. However, this cost will be negligible, and the required information is necessary in order to ensure that the Board has complete information.

In general, the additional stringency of the State rules is justified by the Board's statutory mandate to oversee utility rates. Unlike the NRC, the Board has an obligation to ensure that the portion of New Jersey utility rates that supports decommissioning funds is adequate but not excessive. In order to do this, the Board must have accurate and up-to-date information on the realistic decommissioning costs for each nuclear facility, as well as on the status and management of each decommissioning trust fund. The State rule's more stringent requirements are necessary in order to provide this information to the Board. In fact, the Board has used these reports in the past to identify and correct a discontinuity between the amount of money put into decommissioning funds and the amount actually necessary for decommissioning. Based on this information, the Board adjusted the rates paid by citizens to more accurately reflect decommissioning costs. Similarly, the reporting of fund balances by out-of-state joint owners of a nuclear facility can alert the Board to a case where action may be needed by the New Jersey based joint owner to compensate for a shortfall in funds from the out-of-State owner.